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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 03 2010
LIN 08 203 51774

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an environmental scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence.[1] For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Biology from the University of Miami at Coral Gables. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies

[1] The record contains a November 26, 2009 sworn statement by the petitioner before a U.S. Customs and Border Protection (USCBP) officer in which the petitioner states that he wants to "forfeit" his petition because he has secured a job offer in Belgium. The USCBP officer then erroneously advised the petitioner that his appeal had been rejected. As the petitioner has never submitted a written request to withdraw the appeal to this office, however, we will adjudicate the appeal on the merits.

as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, environmental science, and that the proposed benefits of his work, mitigation of the impact of climate change, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner initially submitted his two articles and his unpublished dissertation. While publication demonstrates that the petitioner's work has been circulated in the field, publication alone cannot establish the influence of that work. In response to the director's request for evidence, the petitioner submitted five articles that cite his work. Four of the articles cite the petitioner's work as one of two or more articles in support of the proposition that generalization does not preclude specialization. The final citing article cites the petitioner's work as one of three examples of using the Gaussian, Quadratic or Weibull functions to theoretically or empirically describe thermal performance curves. A review of the petitioner's 2004 article reveals that he used the quadratic function. The citing article, however, ultimately used the Gaussian function. The petitioner's citation history does not reflect that other environmental scientists are using his methods or that he produced results that have influenced the field.

The petitioner also submitted evidence that he registered his presentation entitled "Community-based Approach to Research on Infectious Diseases of the Developing World and Global Health" for copyright protection. As stated above, a patent is insufficient evidence that a waiver of the alien employment certification process should be waived in the national interest. *Id.* Rather, whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* Similarly, copyright protection, a different intellectual property right, establishes originality but does not, by itself, establish the influence of the work protected. The petitioner did not provide any evidence that this presentation has been cited or other evidence of its influence in the field.

In addition, the petitioner submitted evidence that, as of the date of filing, he was in the process of editing a book on tidal salt marshes of the San Francisco Bay estuary. Specifically, he submitted a letter from [redacted] of the San Francisco Bay National Estuarine Research Reserve, discussing the petitioner's work on the book as part of his responsibilities as the reserve's Site Profile Coordinator. The record also contains the book proposal submitted to the University of California

Press and email traffic among the authors and the petitioner. [redacted] of the University of Oklahoma Biological Station and one of the petitioner's collaborators states that the book "is expected to be widely read nationally and internationally by the scientific community, especially those interested in estuaries and wetlands." On appeal, the petitioner asserts that well established scientists would not have agreed to write a chapter for the book unless the editor was well respected and distinguished. The book, however, had yet to be published as of the date of filing and, as such, its ultimate influence in the field is unknown.

[redacted] further asserts that in 2007, the petitioner cofounded the [redacted] based in Vilnius, Lithuania and Berkeley, California, which he now directs. [redacted] explains that the institute intends to expand collaborations between the European Union and the United States in developing and promoting ecologically sound technologies worldwide. [redacted], however, provides no examples of any actions taken by the institute or the influence of those actions. As stated above, the national interest waiver contemplates future contributions by the alien but is not intended to facilitate the entry of an alien whose benefit to the national interest would be entirely speculative. *See id.* Without evidence that EEI, under the petitioner's direction, has already developed a track record of success, the fact that the petitioner founded and directs the institute does not warrant a waiver of the alien employment certification process in the national interest.

The remaining evidence constitutes letters from the petitioner's colleagues. [redacted], a professor at the University of Miami, asserts that he was a member of the petitioner's doctoral committee. [redacted] discusses the petitioner's dissertation project, which involved testing the adage "a jack-of-all-trades is a master of none" in the context of evolution. Specifically, using environmental tolerance curves, the petitioner measured the fitness of *Daphnia*, an aquatic crustacean, with variable temperatures. [redacted] explains that the petitioner did not find the negative correlation between height and breadth predicted by the adage, concluding: "Instead of there being a tradeoff between broad temperature tolerance and high fitness at any one temperature, [the petitioner] found evidence that some genotypes were simply more fit than others over a range of temperatures." [redacted] notes that because this work addressed temperature, it is relevant to global warming issues.

While the petitioner's research no doubt has potential applications, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research with potential applications inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The petitioner also submitted letters from other colleagues at the University of Miami and the University of Mississippi where the petitioner served on the faculty. These letters praise the petitioner's research and teaching skills, but fail to provide examples of how the petitioner has influenced the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.